

# DELAWARE RIVER BASIN COMMISSION

## PUBLIC NOTICE

### PROPOSED

#### **Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states - New Jersey, New York, Pennsylvania and Delaware - and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for informational purposes.

**Summary:** The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the "Lower Delaware" and to assign this reach the SPW classification "Significant Resource Waters" (SRW). The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.4 to the head of tide at Trenton, New Jersey, RM 144.4. Although no area of the State of Delaware falls within the portion of the Basin subject to the proposed regulations, as a member of the Delaware River Basin Commission, Delaware participates in cooperative management of the Basin's water resources and has a role in deciding whether the proposed rules are adopted.

The Lower Delaware River has carried the SPW-SRW classification on a temporary basis since January of 2005, making this reach and its drainage area subject for the past three years to those provisions of the Commission's SPW regulations that do not depend for implementation upon the use of numeric values for existing water quality. The amendments that currently are proposed would make projects within the Lower Delaware drainage subject to all applicable SPW requirements, including those for "no measurable change" to existing water quality as defined by the rule. The amendments also would incorporate language intended to clarify aspects of the SPW regulations that have been a source of confusion for some DRBC docket holders and applicants since the program was originally adopted in 1992 for point sources and in 1994 for non-point sources. Notably, a new term - "substantial alterations or additions" - is proposed to be added to the Definitions section of the regulations and to be inserted in other sections of the rule to clarify which types of additions or alterations to existing wastewater treatment facilities will trigger certain SPW requirements that are deemed appropriate in connection with capital investment projects. A new paragraph also is proposed to expressly authorize effluent trading between point sources to satisfy the requirement for no measurable change to existing water quality under certain circumstances.

**Background:** The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Commission's Water Quality Regulations, are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They include rules that discourage new and increased discharges to designated waters. Where such discharges are permitted, the rules ensure that incremental pollutant loadings and visual impacts are minimized, that minimum standards of treatment are applied, and that new loadings cause no measurable change from existing water quality, as defined by the rule, except toward natural conditions. The SPW regulations currently include a table establishing the numeric values that define existing water quality in the stream reaches permanently designated by the Commission as SPW in 1992. These reaches include the main stem Delaware River from Hancock, New York, to the downstream boundary of the Delaware Water Gap National Recreation Area as well as the portions of intrastate tributaries to the Delaware located within the boundaries of the Upper Delaware Scenic and Recreational River Corridor and the Middle Delaware Scenic and Recreational River (Delaware River between River Miles 250.1 and 209.5). The locations of water quality control points between Hancock and River Mile 209.5 are provided in a second table. The water quality control points are the locations used to assess water quality for purposes of defining and protecting it. No changes are proposed to the permanent designations and water quality control points that were established in 1992.

Since 2005, the SPW regulations have listed the Lower Delaware River as "Significant Resource Waters"

(SRW) on a temporary basis and have applied to this reach only a portion of the SPW regulations, pending the development of numeric values for existing water quality in the Lower Delaware; a determination as to whether the SRW classification should be assigned to the entire reach or whether the alternative classification, "Outstanding Basin Waters" (OBW), should be used for those portions eligible for that classification by virtue of their inclusion in the National Wild and Scenic Rivers System; and resolution of a number of questions relating to implementation of the program. The proposed amendments would permanently classify the entire Lower Delaware reach as SRW. By incorporating into the regulation numeric values for existing water quality at a set of Lower Delaware River water quality control points, the amendments also would allow all applicable provisions of the SPW regulations to apply to projects within the Lower Delaware drainage.

Key provisions of the SPW regulations that will continue to apply within the drainage area to the Lower Delaware River if the proposed amendments are approved include the following: sections 3.10.3 A.2.c.1. through 3., in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as SPW until all non-discharge-load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility; sections 3.10.3 A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and sections 3.10.3 A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a non-point source pollution control plan approved by the Commission.

If the proposed amendments are adopted, numeric values for twenty parameters will be established, defining existing water quality by rule for purposes of the SPW program at 24 water quality control points in the Lower Delaware River. The parameters include: ammonia-ammonium  $\text{NH}_3\text{-NH}_4$  (mg/l), chloride (mg/l), chlorophyll a (mg/m<sup>3</sup>), dissolved oxygen (mg/l), dissolved oxygen saturation (%), *E. coli* (colonies/100 ml), enterococcus (colonies/100 ml), fecal coliform (colonies/100 ml), nitrate  $\text{NO}_3\text{-N}$  (mg/l), orthophosphate (mg/l), pH, specific conductance (umhos/cm), total dissolved solids (mg/l), total Kjeldahl nitrogen (mg/l), total nitrogen (mg/l), total phosphorus (mg/l), total suspended solids (mg/l), turbidity (NTU), alkalinity (mg/l), and hardness (mg/l). The proposed values are based upon five years of ambient water quality monitoring, from 2000 through 2004.

Adoption of numeric values for existing water quality and creation of a set of Boundary Control Points in the Lower Delaware River will mean that applicants seeking approval to construct new facilities or to expand existing facilities in the Lower Delaware drainage will be required for the first time to demonstrate that their new or increased discharges will cause no measurable degradation of existing water quality at the established water quality control points (sections 3.10.3 A.2.b.2. and 3.10.3 A.2.f.). As in the upper and middle portions of the non-tidal Delaware, the "no measurable change" requirement will apply whether a project discharges directly to the main stem or to a tributary. For certain main stem discharges, if minimum treatment standards alone do not ensure no measurable change at the downstream water quality control point, additional treatment may be required (section 3.10.3 A.2.b.2. in combination with section 3.10.3A.2.d.6.).

Importantly, the proposed amendments, if approved, will add language to clarify that for projects involving existing facilities discharging to SPW - whether in the upper, middle or lower portion of the Delaware River - only substantial additions or alterations as defined by the rule will trigger the requirements that no such project may be approved until (1) all non-discharge load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility (section 3.10.3.A.2.c.1.) (OBW and SRW discharges); (2) the applicant has demonstrated the technical and/or financial infeasibility of using natural wastewater treatment technologies for all or a portion of the incremental load (section 3.10.3.A.2.d.5.) (OBW, SRW and tributary discharges); (3) the Commission has determined that the project is demonstrably in the public interest as defined by the rule (section 3.10.3.A.2.c.3.) (SRW discharges); and (4) the minimum level of treatment to be provided for such projects is Best Demonstrable Technology as defined by the rule (section 3.10.3.A.2.d.6.) (direct OBW and SRW discharges). The proposed amendments further clarify that alterations limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal at existing facilities are not deemed to be "substantial alterations or additions" triggering the foregoing requirements.

The proposed amendments include clarification as to the baseline to be used in measuring predicted changes to existing water quality, and the effect of discharge/load reduction alternatives and/or natural treatment alternatives for projects that involve substantial alterations or additions to existing facilities.

Previous register notices concerning designation of the Lower Delaware River as Special Protection Waters include notices published in the *Delaware Register of Regulations* on Friday, October 1, 2004 (8 DE Reg.

513-515) (proposed designation) and in the Federal Register on September 23, 2004 (69 FR 57008) (proposed designation), August 22, 2005 (70 FR 48923) (proposed extension), August 21, 2006 (71 FR 48497) (proposed extension), and August 22, 2007 (72 FR 46931) (proposed extension). The proposed and final versions of the initial designation and the subsequent extensions also were published on the Commission's website, [www.drbc.net](http://www.drbc.net).

**Dates:** The public hearing will be held on December 4, 2007, at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website, [www.drbc.net](http://www.drbc.net). Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC. The hearing will begin at 2:30 P.M. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609-883-9500, ext. 224. Written comments will be accepted through the close of business on December 6, 2007. Written comments may be submitted by email to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); by fax to Commission Secretary at 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment document and include "SPW" in the subject line.

**Further Information:** The current rule and the full text of the proposed amendments are posted on the Commission's website, [www.drbc.net](http://www.drbc.net), along with supporting data, reports, maps and related documents. Hard copies may be obtained by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. The Commission will hold two informational meetings on the proposed rulemaking. The first will take place on Thursday, October 25, 2007 from 7:00 P.M. to 9:00 P.M. at the office of the Delaware and Raritan Canal Commission at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. The second will be held on Thursday, November 1, 2007 from 7:00 P.M. to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located at High Street, Easton, Pennsylvania. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire, Commission Secretary  
September 14, 2007

**11 DE Reg. 376 (10/01/07) (Prop.)**